In the High Court for the States of Punjab and Haryana, at Chandigarh.

FAO No. 1009 of 2007 (O&M)
Decided on March 12,2007.

Employees State Insurance Corporation and another --- Appellants

vs.

Ram Sarup Verma --- Respondent.

And

FAO No. 1010 of 2007 (O&M)
Decided on March 12,2007.

Employees State Insurance Corporation and another --- Appellants

vs.

Kahan Singh --- Respondent.

Present: Mr. Vikas Suri, Advocate, for the appellants.

Pritam Pal,J: (Oral)

CM Nos 4987-4988 of 2007& 4989-4990 of 2007

Delay of 48 days in filing and 206 days in re-filing both these appeals is condoned for the reasons mentioned in the application. CMs stand disposed of.

FAO No. 1009 of 2007 (O&M)

Since in the aforesaid two appeals, bearing FAO Nos. 1009 and 1010 of 2007, common question of law and fact is involved,

therefore, they are being disposed of by this common order. In these appeals, challenge has been made to the orders dated March 03,2006, passed by learned Civil Judge (Senior Division), Bhiwani (exercising the powers of "Judge, Employees' Insurance Court"), whereby the latter certificates in respect of the disability of the respondents, assessed by the Board of Doctors of Indira Gandhi Zilmil, ESI Hospital, Shahdra, New Delhi, had been ignored and the petitions filed by the respondents had been allowed with costs and interest.

Admittedly, both the respondents, in the aforesaid appeals, were insured for their entitlement on account of their disability assessed by the Medical Board. In the earlier disability certificates issued by the competent 'Board of Doctors, their disability was assessed at a higher degree than the degree shown in the later disability certificates issued by the 'Board of Doctors at Indira Gandhi Zhilmil, ESI Hospital, Shahdra, New Delhi. When the appellants ignored the earlier certificates of the respondents, then they knocked at the door of learned Court, referred to above, and the learned Court, vide its aforesaid orders, allowed the claim of the respondents. This is how feeling aggrieved, the appellants have come up in these appeals.

The only contention of learned counsel for the appellants is that the earlier disability certificates issued by the 'Board of Doctors' are not trust-worthy and as such, the respondents were got re-examined by the 'Board of Doctors' at Shahdra, New Delhi, wherein their disability was found on a lessor side. This contention of learned for the appellants, is devoid of any merit, inasmuch as,there are no allegations against the respondents that they had ever concealed the material facts or

mis-represented to the Employees' State Insurance Corporation or the 'Medical Board'. In this view of the matter, the remedy available to the appellants was under Section 54 A (2) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act'). Under the provisions of the aforesaid Section, if the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation, may appeal in the prescribed manner and within the prescribed time to--

> (i) the Medical Appeal Tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or
>
> (ii) the Employees' Insurance Court' directly"

Hence, in the given circumstances, it can be safely held that re-examination of the respondents by the 'Medical Board of Indira Gandhi, Zhilmil, ESI Hospital, Shahdra, New Delhi, is wrong and contrary to the aforesaid provisions of the Act, and as such, the same has been rightly set aside by the Court below. Even otherwise, under Section 82 (2) of the Act, no appeal lies from an order of the 'Employees Insurance Court' to the High Court, unless some substantial question of law is shown to have arisen. Here, in the instant cases, no such substantial question of law could be made out by the learned counsel for the appellants for consideration by this Court.

Hence, both the appeals stand dismissed in *limine.*

March 12,2007 (Pritam Pal)
RR Judge